

BUCKS COUNTY CRIMINAL COURT SHEET

COMMONWEALTH OF PENNSYLVANIA

Page _____ of _____

Date: 5/16/18

Information No: 17-10073

OTN: [REDACTED]

Voir Dire Time: _____ Hrs. _____ Mins

Trial Time: _____ Hrs. _____ Mins

Clerk: Becca

VS.
Cosmo Dinardo / S /
Judge: Finley
ADA: Shore
Def/PD: Parlow / Perri
Notes: Diane

☐ Arraignment

☐ Call of the List

☒ Guilty Plea

☐ Jury Trial

☐ ARD

☐ Sentencing

☐ PCRA

☐ Section 17

☒ Colloquy D-1

☐ Nolo Plea

☐ Non-Jury Trial

☐ Parole App

☒ Other DA

PACKET OF

INACT LETTERS

☐ Warrant Rescinded

☒ Nol Pros-Counts 6, 7, 12, 13

☐ Bench Warrant Ordered 19, 20

☐ Bail to be Forfeited

☐ Bail Re-Instated

☐ Bail Set

☐ Bail Revoked

☐ Defendant GUILTY

Counts _____

☐ Defendant NOT GUILTY

Counts _____

☐ Sentence Deferred -

REASON: _____

☐ OTHER: _____

☒ Advised of Appellate Rights

☐ PSI: Waived ☐ / Ordered ☐

☐ Defer Execution of Sentence to _____

Victim: Sharon Patrick / S /

Richard Patrick

Mark Potash

Bonnie Finocchiaro

Anthony Finocchiaro

James Frataranduno

SENTENCE: THE COURT ORDERS DEFENDANT:

☐ ARD for _____ months

☐ Section 17 for _____ months

Count 1: ☐ to be placed on COUNTY/STATE PROBATION for _____ months/years

☒ to undergo imprisonment in BCCF/SCI for not less than _____ not more than life

☐ RRRJ NLT _____ to be served in a SCI (only) ☐ RRRJ ineligible ☐ Fine _____

☒ Concurrent / Consecutive to Count 2, 3, 4 Other: _____

Count 2: ☐ to be placed on COUNTY/STATE PROBATION for _____ months/years

☒ to undergo imprisonment in BCCF/SCI for not less than _____ not more than life

☐ RRRJ NLT _____ to be served in a SCI (only) ☐ RRRJ ineligible ☐ Fine _____

☒ Concurrent / Consecutive to Count 1, 3, 4 Other: _____

☒ No Further Penalty on Counts: _____ of the Criminal Information.

☒ Other: Ct. 3 SCI - life Consecutive to Ct. 1, 2, 4

Ct. 4 SCI - life Consecutive to Ct. 1, 2, 3

Def. to be transported immediately to State.

SPECIAL CONDITIONS:

☒ Costs within _____

☐ Costs waived (Δ Indigent)

☐ Summary Offenses: Statutory Costs and Fines

☒ Restitution: \$ 42,043.03 Payable to: See Restitution

☒ Joint & several with Sean Kratz 6072-2017

☐ Credit for Time Served _____

☐ Transfer Supervision \$34,678.08

☐ House Arrest: Screen for / Granted _____

☐ Work Release: Screen for / Granted _____

☐ Immediate Parole: Granted _____

☐ Domestic Violence Program: Screen for / Ordered _____

☐ Sex Offender Supervision _____

☐ Parole at Minimum _____

☐ Anger Management Program: Screen for / Ordered _____

☐ Testify Truthfully if Called _____

☐ No Contact with Victim: _____

☐ No Contact with Co-defendants _____

☐ Drug & Alcohol/Mental Health Evaluation within _____ days and abide by recommendations

☐ Mental Health Treatment _____

☐ Drug and Alcohol Treatment _____

☐ _____ Hours Community Service

☐ Presumptive Parole Provided No Misconduct AND an acceptable, Verified Residence

☐ Letter of Apology

By the Court: [Signature]



INFORMATION

Commonwealth of Pennsylvania
v.
Cosmo Dinardo

Docket No: CP-09-CR-0006073-2017

The Attorney for the Commonwealth of Pennsylvania by this information charges that in the County of Bucks, Pennsylvania, Cosmo Dinardo:

COUNT 1: Criminal Homicide - (H1)

On or about 07/05/2017 18 § 2501 §§ A

Between July 1, 2017 and July 8, 2017, intentionally, knowingly, recklessly, or negligently caused the death of another human being, namely, Jimi Patrick

COUNT 2: Criminal Homicide - (F1)

On or about 07/07/2017 18 § 2501 §§ A

Between July 1, 2017 and July 8, 2017, intentionally, knowingly, recklessly, or negligently caused the death of another human being, namely, Dean Finocchiaro

COUNT 3: Criminal Homicide - (F1)

On or about 07/07/2017 18 § 2501 §§ A

Between July 1, 2017 and July 8, 2017, intentionally, knowingly, recklessly, or negligently caused the death of another human being, namely, Thomas Meo

COUNT 4: Criminal Homicide - (F1)

On or about 07/07/2017 18 § 2501 §§ A

Between July 1, 2017 and July 8, 2017, intentionally, knowingly, recklessly, or negligently caused the death of another human being, namely, Mark Sturgis

COUNT 5: Conspiracy - Criminal Homicide - (F1)

On or about 07/07/2017 18 § 903

Between July 1, 2017 and July 8, 2017, with the intent of promoting or facilitating the commission of Indictment, to wit, Criminal Homicide, agreed with another person, or persons, namely, Sean Kratz, that they or one or more of them would engage in conduct which would constitute such crime, or an attempt or solicitation to commit such crime, and/or agreed to aid another person or persons in the planning or commission of a crime, or of an attempt or solicitation to commit such crime.

COUNT 6: Conspiracy - Criminal Homicide - (F1)

On or about 07/07/2017 18 § 903

Between July 1, 2017 and July 8, 2017, with the intent of promoting or facilitating the commission of a crime, to wit, Criminal Homicide, agreed with another person or persons, namely, Sean Kratz, that they or one or more of them would engage in conduct which would constitute such crime, or an attempt or solicitation to commit such crime, and/or agreed to aid another person or persons in the planning or commission of a crime, or of an attempt or solicitation to commit such crime.

COUNT 7: Conspiracy - Criminal Homicide - (F1)

On or about 07/07/2017 18 § 903

Now 5/16/18
the District Attorney moves for
leave to enter a Nol. Pros. of 6,7,12B,19,20

for Thomas Meo, Mark Sturgis + Dean Finocchiaro
District Attorney

Eo die, leave is granted the
District Attorney to enter said

Nol. Pros.
by the Court. They would engage in conduct
which would constitute such crime, and/or agreed to aid another person or
persons in the planning or commission of a crime, or of an attempt or solicitation to commit such crime.

Presiding Judge

Eo die, said Nol. Pros. is entered.

District Attorney

Printed: 11/27/2017 9:53:03AM



INFORMATION

Commonwealth of Pennsylvania
v.
Cosmo Dinardo

Docket No: CP-09-CR-0006073-2017

The Attorney for the Commonwealth of Pennsylvania by this information charges that in the County of Bucks, Pennsylvania, Cosmo Dinardo:

Between July 1, 2017 and July 8, 2017, with the intent of promoting or facilitating the commission of a crime, to wit, Criminal Homicide, agreed with another person or persons, namely, Sean Kratz, that they or one or more of them would engage in conduct which would constitute such crime, or an attempt or solicitation to commit such crime, and/or agreed to aid another person or persons in the planning or commission of a crime, or of an attempt or solicitation to commit such crime.

COUNT 8: Robbery-Inflct Serious Bodily Injury - (F1)

On or about: 07/07/2017 18 § 3701 §§ A11

Between July 1, 2017 and July 8, 2017, in the course of committing a theft, inflicted serious bodily injury upon another, namely, Dean Finocchiaro.

COUNT 9: Robbery-Inflct Serious Bodily Injury - (F1)

On or about: 07/07/2017 18 § 3701 §§ A11

Between July 1, 2017 and July 8, 2017, in the course of committing a theft, inflicted serious bodily injury upon another, namely, Thomas Meo.

COUNT 10: Robbery-Inflct Serious Bodily Injury - (F1)

On or about: 07/07/2017 18 § 3701 §§ A11

Between July 1, 2017 and July 8, 2017, in the course of committing a theft, inflicted serious bodily injury upon another, namely, Mark Sturgis.

COUNT 11: Conspiracy - Robbery-Inflct Serious Bodily Injury - (F1)

On or about: 07/07/2017 18 § 903

Between July 1, 2017 and July 8, 2017, with the intent of promoting or facilitating the commission of a crime, to wit, Robbery-Inflct Serious Bodily Injury, agreed with another person or persons, namely, Sean Kratz, that they or one or more of them would engage in conduct which would constitute such crime, or an attempt or solicitation to commit such crime, and/or agreed to aid another person or persons in the planning or commission of a crime, or of an attempt or solicitation to commit such crime.

COUNT 12: Conspiracy - Robbery-Inflct Serious Bodily Injury - (F1)

On or about: 07/07/2017 18 § 903

Between July 1, 2017 and July 8, 2017, with the intent of promoting or facilitating the commission of a crime, to wit, Robbery-Inflct Serious Bodily Injury, agreed with another person or persons, namely, Sean Kratz, that they or one or more of them would engage in conduct which would constitute such crime, or an attempt or solicitation to commit such crime, and/or agreed to aid another person or persons in the planning or commission of a crime, or of an attempt or solicitation to commit such crime.

COUNT 13: Conspiracy - Robbery-Inflct Serious Bodily Injury - (F1)

On or about: 07/07/2017 18 § 903



INFORMATION

Commonwealth of Pennsylvania
v.
Cosmo Dinardo

Docket No: CP-09-CR-0006073-2017

The Attorney for the Commonwealth of Pennsylvania by this information charges that in the County of Bucks, Pennsylvania, Cosmo Dinardo:

Between July 1, 2017 and July 8, 2017, with the intent of promoting or facilitating the commission of a crime, to wit, Robbery-Infectious Bodily Injury, agreed with another person or persons, namely, Sean Kratz, that they or one or more of them would engage in conduct which would constitute such crime, or an attempt or solicitation to commit such crime, and/or agreed to aid another person or persons in the planning or commission of a crime, or of an attempt or solicitation to commit such crime

COUNT 14: Abuse Of Corpse - (M2)

On or about: 07/05/2017 18 § 5510

Between July 1, 2017 and July 8, 2017, unlawfully treated a corpse, namely, Jimi Patrick, a way that he or she knew would outrage ordinary family sensibilities

COUNT 15: Abuse Of Corpse - (M2)

On or about: 07/07/2017 18 § 5510

Between July 1, 2017 and July 8, 2017, unlawfully treated a corpse, namely, Dean Finocchiaro, a way that he or she knew would outrage ordinary family sensibilities

COUNT 16: Abuse Of Corpse - (M2)

On or about: 07/07/2017 18 § 5510

Between July 1, 2018 and July 8, 2017, unlawfully treated a corpse, namely, Thomas Meo, a way that he or she knew would outrage ordinary family sensibilities

COUNT 17: Abuse Of Corpse - (M2)

On or about: 07/07/2017 18 § 5510

Between July 1, 2017 and July 8, 2017, unlawfully treated a corpse, Mark Sturgis, a way that he or she knew would outrage ordinary family sensibilities.

COUNT 18: Conspiracy - Abuse Of Corpse - (M2)

On or about: 07/07/2017 18 § 903

Between July 1, 2017 and July 8, 2017, with the intent of promoting or facilitating the commission of a crime, to wit, Abuse Of Corpse, agreed with another person or persons, namely Sean Kratz, that they or one or more of them would engage in conduct which would constitute such crime, or an attempt or solicitation to commit such crime, and/or agreed to aid another person or persons in the planning or commission of a crime, or of an attempt or solicitation to commit such crime

COUNT 19: Conspiracy - Abuse Of Corpse - (M2)

On or about: 07/07/2017 18 § 903

Between July 1, 2017 and July 8, 2017, with the intent of promoting or facilitating the commission of a crime, to wit, Abuse Of Corpse, agreed with another person or persons, namely, Sean Kratz, that they or one or more of them would engage in conduct which would constitute such crime, or an attempt or solicitation to commit such crime, and/or agreed to aid another person or persons in the planning or commission of a crime, or of an attempt or solicitation to commit such crime



INFORMATION

Commonwealth of Pennsylvania
v.
Cosmo Dinardo

Docket No: CP-09-CR-0006073-2017

The Attorney for the Commonwealth of Pennsylvania by this information charges that in the County of Bucks,
Pennsylvania, Cosmo Dinardo:

COUNT 20: Conspiracy - Abuse Of Corpse - (M2)

On or about: 07/07/2017 18 § 903

Between July 1, 2017 and July 8, 2017, with the intent of promoting or facilitating the commission of a crime, to wit, Abuse Of Corpse, agreed with another person or persons, namely, Sean Kratz, that they or one or more of them would engage in conduct which would constitute such crime, or an attempt or solicitation to commit such crime, and/or agreed to aid another person or persons in the planning or commission of a crime, or of an attempt or solicitation to commit such crime

COUNT 21: Poss Instrument Of Crime W/Int - (M1)

On or about: 07/05/2017 18 § 907 §§ A

Between July 1, 2017 and July 13, 2017, possessed an instrument of crime, to wit, firearms and/or backhoe and/or incendiary device, with intent to employ it criminally

COUNT 22: Possession Of Weapon - (M1)

On or about: 07/05/2017 18 § 907 §§ B

Between July 1, 2017 and July 13, 2017, possessed a firearm or other weapon concealed upon his or her person with intent to employ it criminally

Citation of Statute
and Section:

- 1 18 § 2501 §§ A (H1)
- 2 18 § 2501 §§ A (F1)
- 3 18 § 2501 §§ A (F1)
- 4 18 § 2501 §§ A (F1)
- 5 18 § 903 (F1)
- 6 18 § 903 (F1)
- 7 18 § 903 (F1)
- 8 18 § 3701 §§ A11 (F1)
- 9 18 § 3701 §§ A11 (F1)
- 10 18 § 3701 §§ A11 (F1)
- 11 18 § 903 (F1)
- 12 18 § 903 (F1)
- 13 18 § 903 (F1)
- 14 18 § 5510 (M2)
- 15 18 § 5510 (M2)
- 16 18 § 5510 (M2)
- 17 18 § 5510 (M2)
- 18 18 § 903 (M2)
- 19 18 § 903 (M2)
- 20 18 § 903 (M2)
- 21 18 § 907 §§ A (M1)
- 22 18 § 907 §§ B (M1)

Commonwealth of Pennsylvania
Court of Common Pleas
County of Bucks
7th Judicial District



INFORMATION

Commonwealth of Pennsylvania
v.
Cosmo Dinardo

Docket No: CP-09-CR-0006073-2017

The Attorney for the Commonwealth of Pennsylvania by this information charges that in the County of Bucks, Pennsylvania, Cosmo Dinardo:

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth.

A handwritten signature in black ink, appearing to read "Matthew D. Weintraub", written over a horizontal line.

Bucks County District Attorney
Matthew D. Weintraub

LEAVE TO SUBMIT

AND NOW, to wit, _____, 2017, comes Matthew D. Weintraub, District Attorney for the Commonwealth, who certifies that a preliminary hearing cannot be held for the defendant because:
_____ the defendant cannot be found in the Commonwealth
_____ the statute of limitations will run prior to the time when a preliminary hearing can be held
_____ other good cause as per the attached affidavit
WHEREFORE, leave is requested to file this information without a preliminary hearing.

AND NOW, to wit, _____, 2017, leave is granted to the Attorney for the Commonwealth to file this information without a preliminary hearing.

BY THE COURT:

Judge

ARRAIGNMENT

December 14, 2017

The Defendant, being arraigned in open court, pleads not guilty

Eo die, District Attorney accepts

Cosmo D. Nardo

Defendant

[Signature]

District Attorney

GUILTY PLEA

5/16/18
The Defendant changes plea to guilty

Eo die, District Attorney accepts

Cosmo D. Nardo

Defendant

[Signature]

District Attorney

Eo die, District Attorney accepts

Defendant

District Attorney

WAIVER OF JURY TRIAL

AND NOW, _____, 2017, comes the Defendant and pleads not guilty and with the consent of his attorney and the approval of the Judge waives a jury trial and elects to be tried by a Judge without a jury.

Attorney for Defendant

Defendant

Judge

D-1

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : CRIMINAL DOCKET NUMBER:

vs

Cosmo DiNardo : 6073-2017

GUILTY PLEA

You are present before this Court because you have indicated your desire to enter a plea of guilty to some or all of the criminal offenses with which you have been charged.

Please fully answer all of the questions on these papers. If you do not understand a question, indicate that you do not understand by putting a question mark (*?*) in front of the number of the question you do not understand. The question will be explained to you.

Most of the questions are planned to be answered either "YES" or "NO". Where facts are requested, please fill in those facts in the blank spaces provided.

When you have completed the questions, be sure to ask your attorney, the attorney for the Commonwealth (Assistant District Attorney), or the Judge to explain any questions you did not fully understand. The question will be explained and you must fully understand it. Answer all of the questions before you sign at the bottom of the last page.

CD 1. Can you read, write and understand the English language? ☒ YES ☐ NO

CD 2. What is your full name?

Cosmo DiNardo

CD 3. Are you known by any other name or alias? ☐ YES ☒ NO

CD 4. If the answer to Question #3 is YES, by what other name(s)

are you known?

CD 5. How old are you today?

21

CD 6. How far did you go in school? (Highest grade completed)

Some college

CD 7. Have you ever been a patient in a mental institution or have you been

treated for mental illness?

☒ YES ☐ NO

CD 8. If the answer to Question #7 is YES, please explain the details:

Argument with family / mental breakdown

CD 9. Are you now being treated for mental illness?

☒ YES ☐ NO

CD 10. If the answer to Question #9 is YES, please explain the details:

bipolar disorder

CD 11. If the answer to Question #9 is YES, do you still feel you can understand what you are

doing today?

☒ YES ☐ NO

CD 12. If the answer to Question #9 is YES, are you under the influence of any

medications or drugs which would affect your ability to understand these proceedings?

☒ YES ☐ NO

CD13. Do you know what you are here today to plead guilty to some or all of the criminal charges against you? ☒ YES ☐ NO

CD14. Has your attorney explained to you all the things that a person must have done to be guilty of the crime or crimes to which you are pleading guilty? ☒ YES ☐ NO

CD15. Do you admit that you did all the things a person must have done to be guilty of the crime or crimes to which you are pleading guilty? ☒ YES ☐ NO

CD16. Do you now that you have a right to a trial by jury? (Except for certain crimes) ☒ YES ☐ NO

CD17. Do you understand that the right to a trial by Jury means that you can take part in selection of the jury with your attorney; that the jury is chosen from the residents of Bucks County, and that all 12 people on your jury must agree on your guilt beyond a reasonable doubt, before you can be convicted of the crime or crimes with which you are charged? ☒ YES ☐ NO

I understand that this would be a death qualified jury

CD 18. Do you know you are presumed innocent until found guilty? ☒ YES ☐ NO

CD19. Do you understand that the Commonwealth must prove your guilt beyond a reasonable doubt before you can be convicted of the crime(s) charged? ☒ YES ☐ NO

CD20. Do you understand that it is the Commonwealth that has the burden of proving your guilt beyond a reasonable doubt; that you do not have to prove your innocence? ☒ YES ☐ NO

CD 21. Do you know you have the absolute right to remain silent and neither the Judge nor the jury can hold it against you, if you refuse to testify? ☒ YES ☐ NO

CD 22. Do you understand the maximum sentence and fine that you could receive for the crime or crimes to which your pleading guilty, and that the sentences for each crime to which you are pleading guilty could be made to run consecutively (one after another)? ☒ YES ☐ NO

CD 23. Do you understand that the Pennsylvania Sentencing Code provides that for sentences involving incarceration (whether a State or County sentence); a minimum and maximum sentence must be ordered; there is no requirement that you are to be paroled after the passage of the minimum sentence; in fact, you have no right to be paroled at all? ☒ YES ☐ NO

CD 24. Are you aware that the Judge does not have to sentence you to the term of probation or jail sentence upon which your attorney and Assistant District Attorney have agreed? ☒ YES ☐ NO

CD 25. Do you understand that if the Judge does not accept the plea agreement, you may withdraw your guilty plea? ☒ YES ☐ NO

After you enter your guilty plea and it is accepted by the Judge, you still have a right to appeal your conviction. Your appeal from a guilty plea is limited to any or all of the following four (4) reasons, that:

1. your guilty plea was not voluntary, or knowing, or intelligent;
2. the Court did not have jurisdiction (authority) to accept your plea because the crime(s) to which you are pleading guilty did not occur in Bucks County
3. the Judge's sentence is illegal because it is beyond the maximum penalties authorized by law;
4. your attorney was not effective in representing you.

CD 26. Do you understand the four reasons for appeal? ☒ YES ☐ NO

C.D. You have the right to file a post-sentence motion within ten (10) days from today. Your post-sentence motion may include: (i) a motion to challenge the validity of the plea of guilty or nolo contendere, or the denial of a motion to withdraw a plea of guilty or nolo contendere; (ii) a motion for judgment of acquittal; (iii) a motion in arrest of judgment; (iv) a motion for a new trial; and/or (v) a motion to modify sentence. If you challenge the validity of your plea, you must state one or more of the above four reasons. If the Court rules against you, you have thirty (30) days from the date of the order denying your motion in which to file an appeal to the Superior Court. If the Court should fail to rule on your motion at all, then one hundred twenty (120) days after you filed it, it is considered to be denied by operation of law. You have thirty (30) days from the denial of your motion by operation of law to file an appeal to the Superior Court. If you do not file a post-sentence motion, you must file your notice of appeal within thirty (30) days of today. You have the right to assistance of counsel in preparing and filing your post-sentence motions. You also have the right to have counsel argue these motions and write any necessary briefs or memoranda. You also have the right to assistance of counsel in filing, preparing and arguing an appeal to the Superior Court, if the Court should deny post-sentence motions. If you cannot afford to hire counsel, one will be provided free of charge. You do not have to file post-sentence motions in order to preserve the appeal issues raised during your guilty plea or sentencing, but may appeal directly to the Superior Court and sentence and within thirty (30) days.

CD 27. Do you understand the meaning of the various rights that have just been explained to you?

☒ YES ☐ NO

CD 28. Has anyone forced you to enter this plea of guilty?

☐ YES ☒ NO

CD 29. Are you doing this of your own free will?

☒ YES ☐ NO

CD 30. Have any threats been made to you to enter a plea of guilty?

☐ YES ☒ NO

CD 31. Have any promises been made to you to enter a plea of guilty,

other than any plea agreement that has been negotiated for you

by yourself or your attorney?

☐ YES ☒ NO

CD 32. Are you satisfied with your attorney's representation?

☒ YES ☐ NO

CD 33. have you had sufficient time to talk to your attorney before reading

this paper and deciding to plead guilty?

☒ YES ☐ NO

CD 34. has your attorney told you what the words on this paper mean?

☐ YES ☐ NO

CD 35. Your guilty plea is based on factual accusations placed in writing by the

police and sworn to before a District Justice who issued an arrest warrant

for these charges. Are you willing to allow the Assistant District Attorney

to summarize the facts on which you plead?

☒ YES ☐ NO

CD 36. Are you presently on probation or parole?

☐ YES ☒ NO

CD 37. If you are on probation or parole, do you realize that your guilty plea

may mean the plea is a violation of your probation or parole and that you

can be sentenced to prison as a result of that violation?

☐ YES ☐ NO

CD
Both Michael
and Fred have
answered all
my questions.

Both have
visited me to
my satisfaction

CD

n/a

CD 38. Do you understand that the decision to enter a guilty plea is yours

and yours alone?

☒ YES ☐ NO

CD 39. Do you know that you do not have to enter a plea of guilty and give up all

rights as previously explained to you, and that no one can force you to enter

a guilty plea?

☒ YES ☐ NO

CD 40. Do you understand you have a right to a pre-sentence investigation (PSI)

which will give the Court a statement of your past performance in the areas of:

education; criminal history; family situation; disabilities; and general information

regarding your plea to assist the Judge in sentencing?

☒ YES ☐ NO

CD 41. Do you understand that a P.S.I. is usually waived if your plea agreement is

accepted because the information is not needed for sentencing by the Judge?

☒ YES ☐ NO

CD 42. Do you waive the P.S.I. in this case?

☒ YES ☐ NO

CD 43. Do you understand you have a right to be sentenced within ninety (90)

days of today?

☒ YES ☐ NO

CD 44. Do you waive your right to be sentenced within ninety (90) days of today?

☒ YES ☐ NO

CD 45. If your guilty plea proceeding is being conducted using the Court's video

conferencing equipment, do you agree to the use of this equipment for the

purpose of entering your plea?

☒ YES ☐ NO

CD 46. Do you understand that if you are not a United States citizen a guilty plea may result in action by the federal immigration enforcement agencies up to and including deportation? ☒ YES ☐ NO

CD 47. If you are pleading guilty to the charge of Driving Under the Influence, do you understand that the mandatory minimum sentence increases with each subsequent conviction of Driving Under the Influence within ten (10) years of today's date? ☐ YES ☐ NO

CD 48. If your driving privilege is being suspended as a result of pleading guilty to Driving Under the Influence, do you understand that if you are convicted of driving a vehicle while your driving privilege is suspended you will be sentenced to a mandatory minimum of sixty (60) days in prison if you have no alcohol or controlled substance in your system or ninety (90) days in prison if you have any (you need not be intoxicated) alcohol or controlled substance in your system? IF YOUR DRIVER'S LICENSE IS SUSPENDED, YOU MAY NOT DRIVE UNTIL YOUR LICENSE IS PHYSICALLY RETURNED TO YOU. ☐ YES ☐ NO

I swear/affirm that I have completely read the above document. I understand it. I want to enter a plea of guilty to some or all of the crimes with which I am charged. I further swear/affirm that the signature and initials on this document are mine. Furthermore, my attorney has thoroughly reviewed with me all offers that have been made to resolve this case.

Cosmo Di Nardo
SIGNATURE OF DEFENDANT

5/10/18
DATE

I, Michael Parlow, Esquire, state that I have advised my client of the meaning of this document; that it is my belief that the defendant understands what is set forth above; that I am prepared to try this case; and that the defendant understands what he/she is doing by entering a plea of guilty. Furthermore, I have discussed with my client any and all guilty plea offers and the consequences of accepting or rejecting the final offer in this case.

[Signature]
SIGNATURE OF ATTORNEY

5/10/18
DATE

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : NO.

6073-2017

vs.

COSMO DINARDO C.D. 5/10/18

The following document is being used in preparation for a PLEA OF GUILTY in the above-captioned cases. The purpose of this document is to inform you of various RIGHTS that you will be giving up as a result of this plea of guilty, as well as to inform you of the potential penalties associated with this plea of guilty, and to inform you of your post-sentence appellate rights.

C.D. 1. Can you read, write and understand the English language?
☒ Yes ☐ No

C.D. 2. Print your full legal name.
Cosmo DinarDO

C.D. 3. What is your date of birth?
1 / 1 / 21 / 97

C.D. 4. What is the highest grade that you completed in school?
Some college

C.D. 5. Do you have a history of substance abuse? (alcohol, illegal drugs, prescription medication)
☐ Yes ☒ No

a) if you answered #5 YES, when was the last time you were under the influence of these substances?

b) if you answered #5 YES, are you under the influence of these substances today? ☐ Yes ☐ No

c) Are you clear-headed and do you understand what the words on this page mean? ☒ Yes ☐ No

CD 6. Do you have a history of mental health issues, or are you currently being treated for any mental health issues?
☒ Yes ☐ No

() a) if you answered #6 YES, have you ever been hospitalized for mental health issues? ☒ Yes ☐ No

CD b) if you answered #6 YES, are you currently taking medication for a mental health issue THAT WOULD INTERFERE WITH YOUR ABILITY TO UNDERSTAND THESE PROCEEDINGS OR THE WORDS ON THIS PAGE?
no

CD 7. Are you currently taking any prescription medication THAT WOULD INTERFERE WITH YOUR ABILITY TO UNDERSTAND THESE PROCEEDINGS OR THE WORDS ON THIS PAGE?
☐ Yes ☒ No

CD 8. Do you understand that Criminal Charges have been filed against you by the Commonwealth of Pennsylvania?
☒ Yes ☐ No

CD 9. ^{most serious} List the charges with which you have been charged:

Criminal Homicide	18§ 2501 §§A.
Conspiracy - Criminal Homicide	18§ 903
Robbery-Inflct Serious Bodily Injury	18§ 3701 §§A11
Abuse of Corpse	18§ 5510

CD 10. Do you understand all of the things that you must have done in order for you to be guilty of each of the crimes with which you have been charged?
☒ Yes ☐ No

CD 11. Do you agree tht you, in fact, did all of the things that a person must have done to be guilty of the crimes to which you are pleading guilty?
☒ Yes ☐ No

CD 12. Has anyone promised you what sentence the Court will impose in your case?
☒ Yes ☐ No

CD 13. Do you understand that there is a maximum sentence for each criminal charge, above which a Judge could not lawfully sentence you?
☒ Yes ☐ No

a. Has the maximum penalty in you case been explained to you?
☒ Yes ☐ No

CD 14. Do you understand that if you have been charged with multiple criminal offenses, and those crimes do not merge for sentencing purposes, a Judge may lawfully sentence you CONSECUTIVELY as to each crime to which you are pleading guilty?

☒ Yes ☐ No

CD 15. Do you understand that the Pennsylvania Commission on Sentencing has recommended a particular sentence as to each criminal charge in your case?

☒ Yes ☐ No

CD a. Have the Sentencing Guidelines been reviewed with you?

☒ Yes ☐ No

CD b. Do you understand that the Judge is not constrained by these Guidelines and may therefore depart either above the guidelines or below the guidelines, provided that the Judge places the reason for such a deviation on the record?

☒ Yes ☐ No

CD 16. Do you understand that if you receive a sentence of incarceration, you may be directed to serve that sentence in either a County or State Facility?

☐ Yes ☐ No

N/A

CD 17. Do you understand that if you receive a sentence of incarceration, a minimum and a maximum sentence must be ordered?

☐ Yes ☐ No

N/A

CD 18. Do you understand that, unless a Judge orders otherwise, there is no requirement that you are to be paroled after the expiration of your minimum sentence.

☐ Yes ☐ No

N/A

CD 19. Do you understand that there is no right to parole, and that parole can be denied until the expiration of your maximum sentence?

☐ Yes ☐ No

N/A

CD 20. Do you understand that you have the right to be represented by an attorney in this matter, and that if you can demonstrate that you cannot afford an attorney, the Court will appoint an attorney to represent you free of charge?

☒ Yes ☐ No

CD 21. Have you had adequate time to discuss this case with your attorney?

☒ Yes ☐ No

*As explained
in the other
document.*

CD 22. Are you satisfied with the representation provided by your attorney?

☒ Yes ☐ No

CJ 23. Do you understand that unless requested otherwise by you or the Commonwealth, the Judge will likely sentence you immediately after your Guilty Plea is accepted?
☒ Yes ☐ No

CA 24. Do you understand that if your sentence is deferred to another date, you may be sentenced by a Judge other than the Judge that accepted your Guilty Plea.
☐ Yes ☒ No

CJ 25. Do you understand that you may petition the Court to withdraw your Guilty Plea?
☒ Yes ☐ No

CA a. Do you understand that you may be permitted to withdraw your Guilty Plea to sentencing for a Fair and Just reason?
☒ Yes ☐ No

CJ b. Do you understand that you may be permitted to withdraw your Guilty Plea after you have been sentenced only upon a showing of manifest necessity?
☒ Yes ☐ No

CJ 26. Are you currently on probation or parole?
☐ Yes ☒ No

a. Do you understand that if you are on probation or parole, your plea of guilty may result in a violation of your probation or parole, and that you may be given a sentence of incarceration as a result of that violation?
☐ Yes ☐ No

CJ 27. Do you understand that you may have the right to Pre-Sentence Investigation, to be conducted by the department of Probation and Parole, which will educate the Court concerning your family history, education, criminal history and other aggravating and mitigating circumstances in this case?
☒ Yes ☐ No

CJ 28. Do you want a Pre-Sentence Investigation?
☐ Yes ☒ No

C/D 29. Do you understand that entering a Guilty Plea may have adverse effects of your life that are separate and apart from the criminal penalties in this case?
☒ Yes ☐ No

C/D a. do you understand that these issues may include such topics as:
i. Loss of driving privileges
ii. Deportation
iii. Loss of government benefits
iv. Your ability to vote/hold public office
v. Your ability to lawfully possess a firearm
☒ Yes ☐ No

C/D 30. Do you understand that you DO NOT have to enter a Guilty Plea?
☒ Yes ☐ No

C/D 31. Do you understand that the decision of whether or not plead guilty is yours and yours alone?
☒ Yes ☐ No

C/D 32. Has anyone threatened you or forced you to enter this plea of guilty?
☐ Yes ☒ No

C/D 33. Are you entering this plea of guilty voluntarily and of your free will?
☒ Yes ☐ No

C/D 34. Do you understand that you have an absolute right to a trial?
☒ Yes ☐ No

C/D a. Do you understand that if the maximum sentence in your case does not exceed one year, that you have a right to a trial in front of a Judge?
☐ Yes ☒ No *n/a*

C/D b. Do you understand that if the maximum sentence in your case exceeds one year, that you have a right to a trial in front of a Judge or Jury?
☒ Yes ☐ No

C/D 35. Do you understand that the right to a trial by Jury means that you can take part in choosing the twelve-person jury that will deliberate on your case from among the citizens of the County?
☒ Yes ☐ No *I understand it would be a death qualified jury.*

36. Do you understand that this Jury would have to be unanimous in their decision, meaning that all twelve jurors will have to agree that you are either not guilty or that you are guilty?

☒ Yes ☐ No

a. Do you further understand that if the jurors can not reach a unanimous conclusion, you may be entitled to a new trial, or to have the charges against you dismissed?

☒ Yes ☐ No

37. Do you understand that at any trial in this matter, the Commonwealth must prove your guilt as to each charged offense beyond a reasonable doubt?

☒ Yes ☐ No

38. Do you understand that you are presumed to be innocent until found guilty?

☒ Yes ☐ No

39. Do you understand that you have the right to remain silent throughout the trial?

☒ Yes ☐ No

40. Do you understand that the Commonwealth has the burden of proving your guilt beyond a reasonable doubt, and that you, therefore, do not have to prove your innocence?

☒ Yes ☐ No

41. Do you understand that you have the right to file pre-trial motions in this case that could argue that your Constitutional or statutory rights were violated because of the way in which this case was handled and investigated by the Commonwealth?

☒ Yes ☐ No

a. Do you understand that if you enter a plea of guilty, you are forever giving up your right to argue these pre-trial motions, and that if such motions have already been filed, they will never be ruled upon by the Court?

☒ Yes ☐ No

42. If the terms of a guilty plea have been negotiated between yourself and the Commonwealth, do you understand that a Judge is not bound by this negotiation and may refuse to accept the negotiation?

CJ ☒ Yes ☐ No

CJ a. Do you understand that if a Judge refuses to accept your plea negotiations, you may be permitted to withdraw your plea of guilty?

☒ Yes ☐ No

43. Do you understand that if your case is not negotiated (often called an open plea), the Judge is free to impose any sentence deemed appropriate, provided such sentence is within the statutory maximum for each criminal charge?

☐ Yes ☐ No

n/a

- CJ 44. Your guilty plea is a (n):

☐ Open plea

☒ Negotiated plea, with the following recommended terms:

The Commonwealth and the Defendant have agreed that in exchange for this guilty plea he will not be subjected to the death penalty and will receive four consecutive life sentences.

Cosmo DiNardo 5/10/18
Cosmo Dinardo

18 Pa.C.S. § 2502

Pa.C.S. documents are current through 2018 Regular Session Acts 1-14; P.S. documents are current through 2018 Regular Session Acts 1-14

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes > Title 18. Crimes and Offenses (Pts. I—III) > Part II. Definition of Specific Offenses (Arts. A—G) > Article B. Offenses Involving Danger to the Person (Chs. 23—32) > Chapter 25. Criminal Homicide (§§ 2501—2507)

§ 2502. Murder.

CD 5/10/18

- (a) *Murder of the first degree.* —A criminal homicide constitutes murder of the first degree when it is committed by an intentional killing.
- (b) *Murder of the second degree.* —A criminal homicide constitutes murder of the second degree when it is committed while defendant was engaged as a principal or an accomplice in the perpetration of a felony.
- (c) *Murder of the third degree.* —All other kinds of murder shall be murder of the third degree. Murder of the third degree is a felony of the first degree.
- (d) *Definitions.* —

As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Fireman." —Includes any employee or member of a municipal fire department or volunteer fire company.

"Hijacking." —Any unlawful or unauthorized seizure or exercise of control, by force or violence or threat of force or violence.

"Intentional killing." —Killing by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing.

"Perpetration of a felony." —The act of the defendant in engaging in or being an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit robbery, rape, or deviate sexual intercourse by force or threat of force, arson, burglary or kidnapping.

"Principal." —A person who is the actor or perpetrator of the crime.

History

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1974-46 (H.B. 1060), P.L. 213, § 4, approved Mar. 26, 1974, eff. immediately; Act 1978-39 (S.B. 1118), P.L. 84, § 1, approved Apr. 28, 1978, eff. in 60 days.

Annotations

LexisNexis® Notes

18 Pa.C.S. § 903

Pa.C.S. documents are current through 2018 Regular Session Acts 1-14; P.S. documents are current through 2018 Regular Session Acts 1-14

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes > Title 18. Crimes and Offenses (Pts. I — III) > Part I. Preliminary Provisions (Chs. 1 — 13) > Chapter 9. Inchoate Crimes (§§ 901 — 913)

§ 903. Criminal conspiracy.

- (a) **Definition of conspiracy.** — A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:
- (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
 - (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.
- (b) **Scope of conspiratorial relationship.** — If a person guilty of conspiracy, as defined by subsection (a) of this section, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, to commit such crime whether or not he knows their identity.
- (c) **Conspiracy with multiple criminal objectives.** — If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.
- (d) **Joinder and venue in conspiracy prosecutions.**
- (1) Subject to the provisions of paragraph (2) of this subsection, two or more persons charged with criminal conspiracy may be prosecuted jointly if:
 - (i) they are charged with conspiring with one another; or
 - (ii) the conspiracies alleged, whether they have the same or different parties, are so related that they constitute different aspects of a scheme of organized criminal conduct.
 - (2) In any joint prosecution under paragraph (1) of this subsection:
 - (i) no defendant shall be charged with a conspiracy in any county other than one in which he entered into such conspiracy or in which an overt act pursuant to such conspiracy was done by him or by a person with whom he conspired;
 - (ii) neither the liability of any defendant nor the admissibility against him of evidence of acts or declarations of another shall be enlarged by such joinder; and
 - (iii) the court shall order a severance or take a special verdict as to any defendant who so requests, if it deems it necessary or appropriate to promote the fair determination of his guilt or innocence, and shall take any other proper measures to protect the fairness of the trial.
- (e) **Overt act.** — No person may be convicted of conspiracy to commit a crime unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

(f) *Renunciation.* — It is a defense that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal intent.

(g) *Duration of conspiracy.* — For purposes of 42 Pa.C.S. § 5552(d) (relating to commission of offense):

- (1) conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired;
- (2) such abandonment is presumed if neither the defendant nor anyone with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation; and
- (3) if an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation therein.

History

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1978-53 (H.B. 825), P.L. 202, § 7, approved Apr. 28, 1978, eff. in 60 days.

Annotations

LexisNexis® Notes

Case Notes

Evidence was sufficient to convict defendant of criminal conspiracy to commit robbery because the victim's testimony regarding defendant and his cohort's behavior during the robbery was sufficient to show a shared intent and implicit agreement to commit a robbery, as well as multiple overt acts perpetrated in furtherance of that conspiracy; that this testimony was uncorroborated was immaterial. Commonwealth v. Johnson, 2018 PA Super 40, 2018 Pa. Super. LEXIS 154 (Pa. Super. Ct. 2018).

In this Pa. R. App. P. 1925 matter, the trial court recommended that defendant's conspiracy to tamper with public records/information conviction be affirmed as it was supported by sufficient evidence since: (1) the test materials distributed to a school under defendant's administration were records because the information was used to gauge and track students' educational development and the test materials were directly related to the functions of state and federal agencies; (2) defendant tampered with the records by removing them from the box before test administration and directing witness one to copy them and by inciting witness two's students to change their answers; and (3) defendant did not proffer that she renounced the conspiracy. Commonwealth v. Sloane, 2017 Phila. Ct. Com. Pl. LEXIS 370 (Pa. C.P. June 6, 2017), aff'd, (Pa. Super. Ct. Mar. 20, 2018).

In this Pa. R. App. P. 1925 matter, the court recommended that the judgment be affirmed as sufficient evidence supported defendant's conspiracy to commit murder conviction as: (1) defendant went with two co-conspirators to the victim's house, armed with a handgun; (2) defendant pulled a gun, pointed it at the victim's stomach and chest and grabbed him by the shirt demanding money; (3) defendant and his co-conspirators arrived, left and completed their plan together; (4) as defendant and the victim tussled over the gun, defendant called for co-conspirator one (CC1) to help him; and (5) CC1 then also let co-conspirator two into the house, who shot the victim. Commonwealth v. Cortez, 2017 Phila. Ct. Com. Pl. LEXIS 320 (Pa. C.P. May 23, 2017), aff'd, (Pa. Super. Ct. Nov. 28, 2017).

18 Pa.C.S. § 3701

Pa.C.S. documents are current through 2018 Regular Session Acts 1-14; P.S. documents are current through 2018 Regular Session Acts 1-14

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes > Title 18. Crimes and Offenses (Pts. I — III) > Part II. Definition of Specific Offenses (Arts. A — G) > Article C. Offenses Against Property (Chs. 33 — 41) > Chapter 37. Robbery (§§ 3701 — 3702)

§ 3701. Robbery.

(a) Offense defined.

- (1) A person is guilty of robbery if, in the course of committing a theft, he:
 - (i) inflicts serious bodily injury upon another;
 - (ii) threatens another with or intentionally puts him in fear of immediate serious bodily injury;
 - (iii) commits or threatens immediately to commit any felony of the first or second degree;
 - (iv) inflicts bodily injury upon another or threatens another with or intentionally puts him in fear of immediate bodily injury;
 - (v) physically takes or removes property from the person of another by force however slight; or
 - (vi) takes or removes the money of a financial institution without the permission of the financial institution by making a demand of an employee of the financial institution orally or in writing with the intent to deprive the financial institution thereof.
- (2) An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft or in flight after the attempt or commission.
- (3) For purposes of this subsection, a "financial institution" means a bank, trust company, savings trust, credit union or similar institution.

(b) Grading.

- (1) Except as provided under paragraph (2), robbery under subsection (a)(1)(iv) and (vi) is a felony of the second degree; robbery under subsection (a)(1)(v) is a felony of the third degree; otherwise, it is a felony of the first degree.
- (2) If the object of a robbery under paragraph (1) is a controlled substance or designer drug as those terms are defined in section 2 of the act of April 14, 1972 (P.L. 233, No. 64), known as the Controlled Substance, Drug, Device and Cosmetic Act, robbery is a felony of the first degree.

History

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1976-102 (H.B. 690), P.L. 425, § 1, approved June 24, 1976, eff. immediately; Act 2010-11 (S.B. 605), P.L. 143, § 1, approved Mar. 16, 2010, eff. in 60 days; Act 2013-131 (S.B. 731), P.L. 1264, § 1, approved Dec. 23, 2013, eff. in 60 days.

Annotations

18 Pa.C.S. § 5510

Pa.C.S. documents are current through 2018 Regular Session Acts 1-14; P.S. documents are current through 2018 Regular Session Acts 1-14

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes > Title 18. Crimes and Offenses (Pts. I — III) > Part II. Definition of Specific Offenses (Arts. A — G) > Article F. Offenses Against Public Order and Decency (Chs. 55 — 59) > Chapter 55. Riot, Disorderly Conduct and Related Offenses (Subchs. A — B) > Subchapter A. Definition of Offenses Generally (§§ 5501 — 5517).

§ 5510. Abuse of corpse.

Except as authorized by law, a person who treats a **corpse** in a way that he knows would outrage ordinary family sensibilities commits a misdemeanor of the second degree.

History

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months.

Annotations

LexisNexis® Notes

Case Notes

Criminal Law & Procedure: Criminal Offenses: Crimes Against Persons: General Overview

Criminal Law & Procedure: Criminal Offenses: Inchoate Crimes: Conspiracy: Elements

Criminal Law & Procedure: Criminal Offenses: Miscellaneous Offenses

Criminal Law & Procedure: Criminal Offenses: Miscellaneous Offenses: General Overview

Criminal Law & Procedure: Criminal Offenses: Sex Crimes: Sexual Assault: Rape: Elements

Criminal Law & Procedure: Interrogation: Miranda Rights: Voluntary Waiver

Evidence: Procedural Considerations: Weight & Sufficiency

Torts: Negligence: Actions: Interference With Dead Bodies: Elements

Criminal Law & Procedure: Criminal Offenses: Crimes Against Persons: General Overview

18 Pa.C.S. § 907

Pa.C.S. documents are current through 2018 Regular Session Acts 1-14; P.S. documents are current through 2018 Regular Session Acts 1-14

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes > Title 18. Crimes and Offenses (Pts. I — III) > Part I. Preliminary Provisions (Chs. 1 — 13) > Chapter 9. Inchoate Crimes (§§ 901 — 913)

§ 907. Possessing instruments of crime.

- (a) **Criminal instruments generally.** — A person commits a misdemeanor of the first degree if he possesses any instrument of crime with intent to employ it criminally.
- (b) **Possession of weapon.** — A person commits a misdemeanor of the first degree if he possesses a firearm or other weapon concealed upon his person with intent to employ it criminally.
- (c) **Unlawful body armor.** — A person commits a felony of the third degree if in the course of the commission of a felony or in the attempt to commit a felony he uses or wears body armor or has in his control, custody or possession any body armor.
- (d) **Definitions.** —

As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Body armor." — Any protective covering for the body, or parts thereof, made of any polyaramid fiber or any resin-treated glass fiber cloth or any material or combination of materials made or designed to prevent, resist, deflect or deter the penetration thereof by ammunition, knife, cutting or piercing instrument or any other weapon.

"Instrument of crime." — Any of the following:

- (1) Anything specially made or specially adapted for criminal use.

(2)

Anything used for criminal purposes and possessed by the actor under circumstances not manifestly appropriate for lawful uses it may have.

"Weapon." — Anything readily capable of lethal use and possessed under circumstances not manifestly appropriate for lawful uses which it may have. The term includes a firearm which is not loaded or lacks a clip or other component to render it immediately operable, and components which can readily be assembled into a weapon.

History

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1995-27 (S.B. 729), P.L. 238, § 1, approved July 6, 1995, eff. in 60 days; Act 1996-98 (S.B. 1254), P.L. 552, § 1, approved July 11, 1996, eff. in 60 days.

Annotations

① 15.2501A (Crim)

CRIMINAL HOMICIDE—INTRODUCTION

1. The defendant is charged with taking the life of *[name of victim]* by criminal homicide. There are *[six]* *[number]* possible verdicts that you might reach in this case—not guilty or guilty of one of the following crimes: *[murder of the first degree]* *[murder of the second degree]* *[murder of the third degree]* *[voluntary manslaughter]* *[involuntary manslaughter]*.

[The remainder of this instruction should be tailored to the individual case and reference made ONLY to those degrees of homicide or defenses actually before the jury]

2. Before defining each of these crimes, I will tell you about malice, which is an element of murder but not of manslaughter. A person who kills must act with malice to be guilty of any degree of murder. The word "malice," as I am using it, has a special legal meaning. It does not mean simply hatred, spite, or ill-will. Malice is a shorthand way of referring to any of three different mental states that the law regards as being bad enough to make a killing murder. The type of malice differs for each degree of murder.

3. Thus, for murder of the *first degree*, a killing is with malice if the perpetrator acts with: first, an intent to kill, or as I will explain later in my definition of first-degree murder, the killing is willful, deliberate, and premeditated.

4. For murder of the *second degree*, or "felony murder" as second-degree murder is commonly called, a killing is with malice if the perpetrator engages in one of certain enumerated felonies and a killing occurs, since the law, through the felony murder rule, allows the finder of fact to infer that the killing was malicious from the fact that the actor was engaged in a felony of such a dangerous nature to human life that the perpetrator, as held to the standard of a reasonable man, knew or should have known that death might result from the felony.

[First Alternative]

5. For murder of the *third degree*, a killing is with malice if the perpetrator's actions show his or her wanton and willful disregard of an unjustified and extremely high risk that his or her conduct would result in death or serious bodily injury to another. In this form of malice, the Commonwealth need not prove that the perpetrator specifically intended to kill another. The Commonwealth must prove, however, that he or she took action while consciously, that is, knowingly, disregarding the most serious risk he or she was creating, and that, by his or her disregard of that risk, he or she demonstrated his or her extreme indifference to the value of human life.

CJ

[Second Alternative]

5. For murder of the *third degree*, a killing is with malice if the perpetrator acts with [a wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind regardless of social duty indicating an unjustified disregard for the probability of death or great bodily harm and an extreme indifference to the value of human life] [a conscious disregard of an unjustified and extremely high risk that his or her actions might cause death or serious bodily harm].

[6. On the other hand, a killing is without malice if the perpetrator acts under circumstances that reduce the killing to *voluntary manslaughter*. I will tell you what those circumstances are when I define voluntary manslaughter.]

[7. A killing is [likewise] without malice if the perpetrator acts with lawful justification or excuse. Lawful justification or excuse not only negates malice but also is a complete defense to any charge of criminal homicide. I shall say more about this when I charge you on the defense of [self-defense] [type of defense].]

ADVISORY COMMITTEE NOTE

The revision of the instruction regarding malice in support of a second-degree murder charge is faithful to the view of the matter initially discussed in *Commonwealth v. Legg*, 417 A.2d 1152 (Pa. 1980), and later made explicit in *Commonwealth v. Lambert*, 795 A.2d 1010 (Pa.Super. 2002). The *Lambert* court stated the following, while citing *Legg*:

When an actor engages in one of the statutorily enumerated felonies and a killing occurs, the law, via the felony murder rule, allows the finder of fact to infer the killing was malicious from the fact that the actor was engaged in a felony of such a dangerous nature to human life because the actor, as held to the standard of a reasonable man, knew or should have known that death might result from the felony.

795 A.2d at 1023.

Malice, for second-degree purposes, is imputed to the defendant from the defendant's intent to commit the underlying felony. *Commonwealth v. Mikell*, 729 A.2d 566 (Pa. 1999).

Furthermore, the felony must not be an afterthought; the defendant must have the intent to commit the felony before the homicidal act occurs, see *Commonwealth v. Legg*, above.

The reformulation of the malice instruction for third-degree murder seeks to allow a court to abandon the ancient and archaic statement of malice found in *Commonwealth v. Drum*, 58 Pa. 9 (1868) (which is preserved as the second alternative). The language of *Drum* speaks in the poetry of its age, but continuing today to define this critical and complex term as involving "wickedness of disposition" and/or "hardness of heart" may be as antiquated and ineffective as giving instructions on other matters in *Drum*-like fashion, i.e.,

... Search your consciences for the source of every judgment. Let your convictions, carefully and deliberately formed, be such that you may follow them to their fountain in the hidden depths of the heart where the Unseen Eye alone can penetrate, and there, in that dread presence, challenge their true source.

A life has been taken. The unfortunate David Mohigan has fallen into an untimely grave; struck down by the hand of violence; and it is for you to determine whose was that hand, and what its guilt. The prisoner is in the morning of life; as yet so fresh and fair. As you sat and

gazed into his youthful face, you have thought, no doubt, most anxiously thought, is his that hand? Can he, indeed, be a murderer? This, gentlemen, is the solemn question you must determine upon the law and the evidence.

Id.

The Model Penal Code has long abandoned the *Drum* definition of malice, referring to it as a "confusing elaboration" in an extended passage about the meaning of malice:

Various authorities have given different summaries of the several meanings of "malice aforethought." Generally, these definitions converge on four constituent states of mind. First and foremost, there was intent to kill. Common-law authorities included in the notion of intent to kill awareness that the death of another would result from one's actions, even if the actor had no particular desire to achieve such a consequence. Thus, intentional or knowing homicide was murder unless the actor killed in the heat of passion engendered by adequate provocation, in which case the crime was manslaughter. A second species of murder involved intent to cause grievous bodily harm. Again, knowledge that conduct would cause serious bodily injury was generally assimilated to intent and was deemed sufficient for murder if death of another actually resulted. A third category of murder was sometimes called depraved-heart murder. This label derived from decisions and statutes condemning as murder unintentional homicide under circumstances evincing a "depraved mind" or an "abandoned and malignant heart." Older authorities may have described such circumstances as giving rise to an "implied" or "presumed" intent to kill or injure, but the essential concept was one of extreme recklessness regarding homicidal risk. Thus, a person might be liable for murder absent any actual intent to kill or injure if he caused the death of another in a manner exhibiting a "wanton and willful disregard of an unreasonable human risk" or, in confusing elaboration, a "wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind regardless of social duty." [citing *Commonwealth v. Malone*, 47 A.2d 445 (Pa. 1946), which, in turn, cited *Drum*]. The fourth kind of murder was based on intent to commit a felony. This is the origin of the felony-murder rule, which assigns strict liability for homicide committed during the commission of a felony. These four states of mind exhausted the meaning of "malice aforethought"; the phrase had no residual content.

Model Penal Code, § 210.2, comment 1 at 13-15 (Official Draft and Revised Comments 1980) (footnotes omitted; citations omitted). (These criticisms have been noted by the highest courts of Colorado, *State v. Jefferson*, 748 P.2d 1223 (Col. 1988), and Utah, *State v. Standiford*, 769 P.2d 254 (Utah 1988)).

At least insofar as the "hardness of heart" language is concerned, members of the Pennsylvania Supreme Court have also expressed misgivings. Justice Roberts, writing in concurrence in *Commonwealth v. Haywood*, 346 A.2d 298, 301 (Pa. 1975), noted:

"Hardness of heart" does not adequately define malice and is of little use in the proper analysis of that legal concept. See *Commonwealth v. Taylor*, 461 Pa. 557, 564, 337 A.2d 545, 549 (1975) (concurring opinion of Roberts, J., joined by Jones, C. J., and Eagen and Manderino, JJ.); W. LaFave & A. Scott, *Handbook on Criminal Law* §§ 67-70 (1972).

The modern definitions of homicide and murder contained within the Pennsylvania Crimes Code (sections 2501 to 2502), suggest that malice be defined as the *mens rea* component of the offenses of murder in each of its particular manifestations: intent to kill for first degree, a killing during the course of a prescribed felony for second degree and, for third degree, a killing done in that particular state of recklessness that manifests extreme indifference to the value of human life. Indeed, the Model Penal Code defines murder as that which is committed "purposely or knowingly" or when the killing is "committed recklessly under circumstances manifesting extreme indifference to the value of human life." Model Penal Code, § 210.2.

The language suggested in the first alternative of the instruction deletes the poetry of *Drum* in favor of a statement of the principles of malice drawn from these general sources and ones faithful to the teachings of the Pennsylvania Supreme Court. See *Commonwealth v. Overby*, 836 A.2d 20 (Pa. 2003); *Commonwealth v. O'Searo*, 352 A.2d 30 (Pa. 1976). See also *Commonwealth v. Clinger*, 833 A.2d 792 (Pa. Super. 2003). *Clinger* held that as third-degree murder was a killing committed neither as an intentional act nor

15.2501A (1)

during the course of a felony, there can be no crime of conspiracy to commit it since conspiracy would imply that a defendant intended the resultant death. 833 A.2d at 796-97. The court held that "the essence of third-degree murder is a homicide which occurs as the unintended consequence of a malicious act." 833 A.2d at 796.

For similar reasons, there is no offense, strictly speaking, of attempted third-degree murder. See *Commonwealth v. Geathers*, 847 A.2d 730, 735-36 (Pa. Super. 2004).

15.2501B (Crim)

CRIMINAL HOMICIDE—FINDING LESSER TYPE

1. I have defined the elements of the [five] [number] types of criminal homicide that you might possibly find in this case. Beginning with the most serious, they are, in order of seriousness, [first-degree murder] [second-degree murder] [third-degree murder] [voluntary manslaughter] [involuntary manslaughter]. You have the right to bring in a verdict finding the defendant not guilty or finding [him] [her] guilty of one of these types of criminal homicide.

[2. It may help you remember each type of criminal homicide if I review some highlights. [Murder requires malice, manslaughter does not. First-degree murder requires a specific intent to kill. Second-degree murder is felony murder. Third-degree murder is any other murder. Voluntary manslaughter is basically an intentional killing for which malice is not proven because of [passion and provocation] [an unreasonable mistaken belief in justifying circumstances]. Involuntary manslaughter requires a reckless or grossly negligent killing.] [give specifics].]

ADVISORY COMMITTEE NOTE

While the issue of a jury's power to "dispense mercy" by finding manslaughter as a lesser offense where the evidence would not otherwise support such a verdict had been the subject of some debate through the years, the Supreme Court of Pennsylvania has determined that instructions on lesser degrees of homicide may only be given where evidence in the case would support it. See *Commonwealth v. Pierce*, 786 A.2d 203, 212 (Pa. 2001) (a defendant "cannot claim entitlement to a jury instruction that has no basis in the evidence presented at trial"); *Commonwealth v. Ragan*, 743 A.2d 390, 396 (Pa. 1999) ("a voluntary manslaughter instruction is warranted only where the offense is at issue and the evidence would support such a verdict"); *Commonwealth v. Jones*, 651 A.2d 1101, 1107 (Pa. 1994); *Commonwealth v. Carter*, 466 A.2d 1328 (Pa. 1983). See also extended discussion in *Commonwealth v. Grove*, 526 A.2d 369 (Pa. Super. 1987).

The quantum of evidence necessary to support the giving of such an instruction requires that a lesser included offense charge be given where there is some disputed evidence regarding the element that is unique to the greater charge; or, if the evidence, while not specifically contradicted by differing testimony, is still capable of more than one rational inference with respect to the unique element, the charge should be given. *Commonwealth v. Coleman*, 496 A.2d 1207, 1209 (Pa. Super. 1985). This is so even if the court finds that the disputed evidence or rational alternative inference is improbable. *Commonwealth v. Channell*, 484 A.2d 783, 788 (Pa. Super. 1984). This is also true of defenses upon which the defendant seeks an instruction. *Commonwealth v. DeMarco*, 809 A.2d 256, 260, n.6 (Pa. 2002).

In death penalty cases, lesser included offense instructions on verdicts supportable by the evidence are a necessary component of due process. *Hopper v. Evans*, 456 U.S. 605 (1982); *Beck v. Alabama*, 447 U.S. 625 (1980).

15.2501C (Crim) CRIMINAL HOMICIDE—CAUSATION

1. The defendant has been charged with [killing] [causing the death of] *[name of victim]*. To find the defendant guilty of this offense, you must find beyond a reasonable doubt that the defendant's conduct was a direct cause of [his] [her] death.

[2. In order to be a direct cause of a death, a person's conduct must be a direct and substantial factor in bringing about the death. There can be more than one direct cause of a death. A defendant who is a direct cause of a death may be criminally liable even though there are other direct causes.]

[3. A defendant is not a direct cause of a death if [the actions of the victim] [the actions of a third person] [the occurrence of another event] *[event]* plays such an independent, important, and overriding role in bringing about the death, compared with the role of the defendant, that the defendant's conduct does not amount to a direct and substantial factor in bringing about the death.]

[4. A defendant's conduct may be a direct cause of a death even though his or her conduct was not the last or immediate cause of the death. Thus, a defendant's conduct may be a direct cause of a death if it initiates an unbroken chain of events leading to the death of the victim.]

[5. A defendant whose conduct is a direct cause of a death cannot avoid liability on the grounds that the victim's preexisting physical infirmities contributed to his or her death.]

ADVISORY COMMITTEE NOTE

Subdivision 1 of this instruction is appropriate whenever there is an issue of whether the defendant's conduct killed the victim, i.e., was the legal cause of the victim's death. The other subdivisions may be used singly or in combination when the kind of causation problems that they address are present.

Where the evidence indicates that the act of an accomplice, rather than of the defendant himself or herself, may have killed the victim, e.g., in a felony murder case, these instructions will have to be modified to make the defendant's liability turn on whether the accomplice's conduct was the direct cause of death. See *Commonwealth v. Smith*, 391 A.2d 1009 (Pa. 1979) (in murder prosecution, proof that defendant was accomplice and principal caused death is sufficient for proof of defendant's causation). Causation instructions should be tailored and related to the facts of the case rather than merely stated as a set of abstract legal propositions. See also *Commonwealth v. Dykes*, 541 A.2d 1 (Pa. Super. 1988) (causation instructions can be adequate without reviewing or commenting on defendant's particular theory).

Both before and after the enactment of the Crimes Code, "direct cause" was and continues to be the basic test for determining legal cause in all types of criminal homicide cases. See, e.g., *Commonwealth v. Root*, 170 A.2d 310 (Pa. 1961) (involuntary manslaughter; direct cause compared with proximate cause); Crimes Code § 2504(a); *Commonwealth v. Kingsley*, 391 A.2d 1027 (Pa. 1978) (voluntary manslaughter; legal cause requires direct cause, which is more than "but-for" cause; causation must be proven beyond reasonable doubt); *Commonwealth v. Allen*, 379 A.2d 1335 (Pa. 1977) (felony murder re-

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quires showing that slayer's act was direct cause of death, at n.4); *Commonwealth v. Evans*, 494 A.2d 383 (Pa.Super. 1985) (felony murder). Subdivision 1 of the instruction requires that the jury find direct cause.

For cases supporting subdivision 2, see *Commonwealth v. Matthews*, 389 A.2d 71 (Pa. 1978) (direct and substantial factor); *Commonwealth v. Skufca*, 294 A.2d 787 (Pa.Super. 1972) (defendant's locking her children in room and a subsequent fire that suffocated children were both direct causes of their death); *Commonwealth v. Evans*, above (felony murder affirmed; robbery aggravated victim's heart disease); *Commonwealth v. Rementer*, 598 A.2d 1300 (Pa.Super. 1991) (causation was established where victim was run over by a car after fleeing from the defendant's physical assault); *Commonwealth v. McCloskey*, 835 A.2d 801 (Pa.Super. 2003) (defendant was guilty of involuntary manslaughter where hosting underage drinking party was a direct and substantial factor in causing a drunken teen's automobile crash); *Commonwealth v. Nicotra*, 625 A.2d 1259 (Pa.Super. 1993) (defendant's intoxication was the legal cause of a fatal auto accident; victim's contributory negligence is not a defense).

Underlying subdivision 3 is the idea that an independent intervening cause, i.e., a supervening cause, is antithetical to direct cause. See, e.g., *Commonwealth v. Uhrinek*, 544 A.2d 947 (Pa. 1988) (vehicular homicide; evidence of victim's intoxication was relevant to support theory that there was no direct causal connection between defendant's driving and victim's death); *Commonwealth v. Robinson*, 364 A.2d 665 (Pa. 1976) (Commonwealth not required to prove that a merely hypothetical supervening event did not take place); *Commonwealth v. Wright*, 317 A.2d 271 (Pa. 1974) (defendant could not be the direct cause if death resulted from victim's independent actions); *Commonwealth v. Colvin*, 489 A.2d 1378 (Pa.Super. 1985) (victim died when her excited son woke her and told her about defendant throwing stone at their home; held direct causal relationship ended when noise of stone striking house frightened son); *Commonwealth v. Youngkin*, 427 A.2d 1356 (Pa.Super. 1981) (no error for trial court to refuse to instruct on meaning of supervening cause when it had charged on elements of involuntary manslaughter and told jury to consider whether victim's conduct diminished defendant's responsibility). See also *Commonwealth v. Lang*, 426 A.2d 691 (Pa.Super. 1981) (vehicular homicide; jury could find that defendant's flight was direct cause of police officer's death during high-speed car chase; *Commonwealth v. Root* distinguished).

The language of subdivision 3, while not taken from any particular case, appears to be consistent with the case law cited above. Although subdivision 3 does not use the term "intervening" or "supervening" cause, it gives the jury some useful guidance for deciding a direct cause/supervening cause issue.

For cases supporting subdivision 4, see *Commonwealth v. Roberson*, 403 A.2d 544 (Pa. 1979) (defendant was cause of death where victim eventually died of pneumonia while hospitalized following beating by defendant); *Commonwealth v. Robinson*, above; *Commonwealth v. Evans*, above.

The rule stated in subdivision 5 can be found in *Commonwealth v. Graves*, 398 A.2d 644 (Pa. 1979). See also *Commonwealth v. Evans*, above.

Both the recklessness-criminal negligence element and the direct cause element of involuntary manslaughter can be predicated on an omission, i.e., on a defendant's failure to act in a situation where he or she has a legal duty to act. See, e.g., *Commonwealth v. Howard*, 402 A.2d 674 (Pa.Super. 1979); advisory committee note to Instruction 15.2504.

It should be recognized that these instructions, and the Pennsylvania case law from which they are derived, allow the jurors substantial leeway in deciding causation issues. The jury is in effect called on, while operating within very general guidelines, to make a moral and social judgment whether the defendant should be held accountable for the death.

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Foreseeability is not a requirement for direct cause, although it may be a required constituent of some other element of a criminal homicide, e.g., the criminal negligence element of involuntary manslaughter. See *Commonwealth v. Rementer*, above; *Commonwealth v. Evans*, above (second-degree murder requires direct causation but death need not be foreseeable). But see *Commonwealth v. Jackson*, 744 A.2d 271, 274 (Pa.Super. 1999) (noting that it was entirely foreseeable that the defendant and his accomplice's drag race might lead to the death of a third person).

With regard to evidence:

- (i) A medical expert may express his or her opinion that the defendant's act caused the death in terms of a reasonable degree of medical certainty. Even if he or she is the only expert who testifies, his or her opinion and the other evidence may be legally sufficient to support a finding of causation beyond a reasonable doubt. See *Commonwealth v. Moore*, 498 A.2d 970 (Pa. Super. 1985), and cases cited therein.
- (ii) If an adult has sole custody of a child when the child suffers an injury that is unquestionably neither self-inflicted nor accidental, a jury may infer that the adult inflicted the injury. See *Commonwealth v. Earnest*, 563 A.2d 158 (Pa. Super. 1989).

15.2502C (Crim)

THIRD-DEGREE MURDER

1. Third-degree murder is any killing with malice [that is not first- or second-degree murder]. The defendant has been charged with third-degree murder. To find the defendant guilty of this offense, you must find that the following three elements have been proven beyond a reasonable doubt:

First, that [name of victim] is dead;

Second, that the defendant killed [him] [her]; and

Third, that the defendant did so with malice.

[2. The word "malice" as I am using it has a special legal meaning. It does not mean simply hatred, spite, or ill-will.

Malice is a shorthand way of referring to particular mental states that the law regards as being bad enough to make a killing murder.]

[First Alternative]

3. For murder of the third degree, a killing is with malice if the perpetrator's actions show his or her wanton and willful disregard of an unjustified and extremely high risk that his or her conduct would result in death or serious bodily injury to another. In this form of malice, the Commonwealth need not prove that the perpetrator specifically intended to kill another. The Commonwealth must prove, however, that the perpetrator took action while consciously, that is, knowingly, disregarding the most serious risk he or she was creating, and that, by his or her disregard of that risk, the perpetrator demonstrated his or her extreme indifference to the value of human life.

[Second Alternative]

3. For murder of the third degree, a killing is with malice if the perpetrator acts with [a wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind regardless of social duty indicating an unjustified disregard for the probability of death or great bodily harm and an extreme indifference to the value of human life] [a conscious disregard of an unjustified and extremely high risk that his or her actions might cause death or serious bodily harm].

[On the other hand, a killing is without malice if the perpetrator acts [with a lawful justification or excuse] [or] [under circumstances that reduce the killing to voluntary manslaughter].]

4. When deciding whether the defendant acted with malice, you should consider all the evidence regarding [his] [her] words, conduct, and the attending circumstances that may show [his] [her] state of mind including *[state of mind]*. [If you believe that the defendant intentionally used a deadly weapon on a vital part of *[name of victim]*'s body, you may regard that as an item of circumstantial evidence from which you may, if you choose, infer that the defendant acted with malice.]

ADVISORY COMMITTEE NOTE

For discussion of these matters, see the note to Instructions 15.2501A and 15.2502A.

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12.903A (Crim)

CONSPIRACY—BASIC INSTRUCTION

1. The defendant is charged with conspiracy to commit [robbery] *[other crime]*.
2. In Pennsylvania, joining in a conspiracy, or creating a conspiracy, is itself a crime. Even if the crime the people are planning is not carried out, the members of a conspiracy are still responsible for the distinct crime of conspiracy.
3. In general terms, a conspiracy is an agreement between two or more persons to commit a crime. A conspiracy exists once two conditions are met—there is an agreement, and one of the members then commits some act to help achieve the goal of the conspiracy. I will now explain each of those elements in greater detail.
4. The first element of conspiracy is an agreement. It can be stated in words, or unspoken but acknowledged. But it must be an agreement in the sense that two or more people have come to an understanding that they agree to act together to commit a crime or crimes. Their agreement does not have to cover the details of how the crime will be committed.

Nor does it have to call for all of them to participate in actually committing the crime. They can agree that one of them will do the job. What is necessary is that the parties do agree—in other words, do come to a firm, common understanding—that a crime will be committed.
5. Although the agreement itself is the essence of the conspiracy, a defendant cannot be convicted of conspiracy unless he or she or a fellow conspirator does something more—an overt act in furtherance of the conspiracy. The overt act is an act by any member of the conspiracy that would serve to further the goal of the conspiracy. The overt act can be criminal or noncriminal in itself, as long as it is designed to put the conspiratorial agreement into effect. This is to show that the parties have a firm agreement and are not just thinking or talking about committing a crime. The overt act shows that the conspiracy has reached the action stage. If a conspirator actually commits or attempts to commit the agreed crime, that obviously would be an overt act in furtherance of the conspiracy. But a small act or step that is much more preliminary, and a lot less significant, can satisfy the overt act requirement.
6. The Commonwealth may prove a conspiracy by direct evidence or by circumstantial evidence. [People who conspire often do their conspiring secretly and try to cover up afterwards.] In many conspiracy trials, circumstantial evidence is the best or only evidence on the questions of whether there was an agreement, that is, a common understanding, and whether the conspirators shared the intent to promote or facilitate committing the object crime. Thus, you may, if you think it proper, infer that there was a conspiracy from the relationship, con-

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duct, and acts of the defendant and his or her alleged co-conspirators and the circumstance surrounding their activities. However, the evidence of this must support your conclusion beyond a reasonable doubt.

7. A defendant cannot be convicted because he or she was present with others, or even because he or she knew what the other or others planned or were doing; there must be proof of an agreement between the defendant and another person or persons to form or continue a conspiracy. To be proved guilty of being a conspirator, the defendant must have intended to act jointly with the other[s] charged and must have intended that the crime[s] alleged to be the goal of the conspiracy would be committed.

ADVISORY COMMITTEE NOTE

The advisory committee cites the following cases for support: *Commonwealth v. Simpson*, 754 A.2d 1264 (Pa. 2000) (discussed in Instruction 8.306(a)); *In re C.C.J.*, 799 A.2d 116 (Pa.Super. 2002); *Commonwealth v. Murphy*, 795 A.2d 1025 (Pa.Super. 2002); *Commonwealth v. Lambert*, 795 A.2d 1010 (Pa.Super. 2002); *Commonwealth v. Galindes*, 786 A.2d 1004 (Pa.Super. 2001); *Commonwealth v. Hennigan*, 753 A.2d 245 (Pa.Super. 2000); *Commonwealth v. Wayne*, 720 A.2d 456 (Pa. 1998) (finding a jury charge on conspiracy to be erroneous regarding first-degree murder); *Commonwealth v. Johnson*, 719 A.2d 778 (Pa.Super. 1998). The Superior Court has reaffirmed that a defendant can be convicted of conspiracy even when he or she is the only one so charged. *Commonwealth v. Fremd*, 860 A.2d 515, 521 (Pa.Super. 2004).

This revision largely mirrors the previously existing conspiracy charge. Minor language changes were made for clarity.

12.903B (Crim)

CONSPIRACY AS CHARGED IN THIS CASE

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[First Alternative]

1. The information alleges that the defendant conspired with certain other persons: *[list individuals by name or as "unknown person" who are alleged co-conspirators].*
2. The information alleges that the crime of *[crime]* was the object of the conspiracy. *[define crime here if not defined elsewhere]*
3. The information alleges that the following actions were overt acts: *[list overt acts].*
4. Before any defendant can be convicted, the 12 jurors must agree on the same person whom the defendant allegedly conspired with, the same object crime, and the same overt act.
5. In order to find the defendant guilty of conspiracy to commit *[crime]*, you must be satisfied that the following three elements have all been proven beyond a reasonable doubt:

First, that the defendant agreed with the other persons that one or more of them would engage in conduct for the planning [and] [or] commission of the crime of *[crime]*;

Second, that the defendant and the other persons intended to promote or facilitate the committing of the *[crime]*. In other words, they shared the intention to bring about that crime or to make it easier to commit that crime; and

Third, that the defendant or the other persons did the acts that are alleged to have been overt acts and did them in furtherance of their conspiracy. [As a general rule, if conspirators have agreed to commit a crime, and after that, one of the conspirators does any act to carry out or advance their agreement, then he or she has done an overt act in furtherance of their conspiracy. The other conspirators do not have to participate in the act or even know about it. In a sense, they are partners, and like partners, they are responsible for each other's actions.]

[Second Alternative]

1. The information alleges that the defendant conspired with a person or persons to commit [several] *[specific number]* crimes and that one or several overt acts were done. As far as numbers are concerned, the minimum requirements for a conspiracy are an agreement between two people to commit one crime, and one overt act committed by one of them. Thus, you may find the defendant guilty if you are satisfied that [he] [she] conspired with at least one alleged co-conspirator to commit at least one alleged object crime and that [he] [she] or that person did at least one alleged overt act in furtherance of the conspiracy.

2. Before any defendant can be convicted, the 12 jurors must agree on the same person whom the defendant allegedly conspired with, the same object crime, and the same overt act.

3. In order to find the defendant guilty of conspiracy to commit at least one of the offenses listed as the objectives of this conspiracy, you must be satisfied that the following three elements have all been proven beyond a reasonable doubt:

First, that the defendant agreed with the other persons that one or more of them would engage in conduct for the planning [and] [or] commission of at least one specified crime to which all 12 jurors agree;

Second, that the defendant and at least one other person to which all 12 jurors agree intended to promote or facilitate the committing of the specified crime. In other words, they shared the intention to bring about that crime or to make it easier to commit that crime; and

Third, that the defendant or the other persons did the overt act that all 12 jurors agree to and did the overt act or acts in furtherance of their conspiracy. [As a general rule, if conspirators have agreed to commit a crime, and after that, one of the conspirators does any act to carry out or advance their agreement, then he or she has done an overt act in furtherance of their conspiracy. The other conspirators do not have to participate in the act or even know about it. In a sense, they are partners, and like partners, they are responsible for each other's actions.]

4. On the verdict sheet, there will be a special section for the crime of conspiracy. If you find that the Commonwealth has proved the defendant guilty beyond a reasonable doubt, you will be asked to mark the crime or crimes that you find proved beyond a reasonable doubt as the objective of the conspiracy. I charge you that a conspiracy can have as its objective one crime or many crimes; but it is your task to determine what objective has been proved beyond a reasonable doubt.

ADVISORY COMMITTEE NOTE

This instruction is meant to expand upon and clarify the general conspiracy instruction, particularly in cases where the complexity of the charge may require it.

The Pennsylvania appellate courts have stated that the elements of an offense under Crimes Code section 903 are the defendant's intent to commit or aid in the commission of the underlying criminal act, the defendant's entering into an agreement with a co-conspirator to engage in the crime, and either the defendant or a co-conspirator committing an overt act in furtherance of the agreement. See *Commonwealth v. Murphy*, 844 A.2d 1228 (Pa. 2004); *Commonwealth v. Davalos*, 779 A.2d 1190 (Pa. Super. 2001). The *Murphy* court put the matter this way:

To convict a defendant of conspiracy, the trier of fact must find that: (1) the defendant intended to commit or aid in the commission of the criminal act; (2) the defendant entered into an agreement with another (a "co-conspirator") to engage in the crime; and

(3) the defendant or one or more of the other co-conspirators committed an overt act in furtherance of the agreed upon crime. *Spotz*, 552 Pa. 499, 716 A.2d 580, 592 (Pa. 1998); see also 18 Pa.C.S. § 903. The essence of a criminal conspiracy, which is what distinguishes this crime from accomplice liability, is the agreement made between the co-conspirators. See *Spotz*, 716 A.2d at 592; *Lambert*, 795 A.2d at 1016.

Id. at 1238

Generally, an overall unanimity instruction may be sufficient in a number of cases, but where the evidence is complex, a potential variance exists between the charge and the proof, and there is some real possibility of juror confusion, a greater specification of the need for unanimity on the elements of the offense is needed. See, generally, *United States v. Washington*, 127 F.3d 510, 513 (6th Cir. 1997); *United States v. Kamerud*, 326 F.3d 1008 (8th Cir. 2003); *United States v. Mansoori*, 304 F.3d 635, 657 (7th Cir. 2002), citing *Richardson v. United States*, 526 U.S. 813, 817 (1999); *Hoover v. Johnson*, 193 F.3d 366 (5th Cir. 1999).

The Superior Court has held, for example, that it was an improper amendment of an information to allow a defendant to be convicted of conspiring with someone not named in the information. *Commonwealth v. Logan*, 501 A.2d 689 (Pa.Super. 1985). While only one overt act need be proved, the jury must agree on which one. See, e.g., O'Malley, Grenig, and Lee, *Federal Jury Practice and Instructions—Criminal*, § 31.07 (2004).

15.3701A (Crim)

ROBBERY—FELONY OF THE FIRST DEGREE

1. The defendant has been charged with robbery. To find the defendant guilty of this offense, you must find that the following two elements have been proven beyond a reasonable doubt:

First, that the defendant:

- [a. inflicted serious bodily injury on the victim; [or]
 - b. threatened the victim with serious bodily injury; [or]
 - c. intentionally put the victim in fear of immediate serious bodily injury; [or]
 - d. committed or threatened to immediately commit the felony of *[type of crime]*;
- and

Second, the defendant did this during the course of committing a theft.

2. "During the course of committing a theft" means that you can find the defendant guilty if you find beyond a reasonable doubt that [he] [she] did these things either while actually committing a theft, attempting to commit a theft, or while fleeing after either committing or attempting to commit a theft. A theft, of course, means [taking unlawful control of] [or] [exercising unlawful control over] someone else's property intending not to give it back.

3. "Serious bodily injury" is defined in the law as a bodily injury that creates a serious risk of death or causes serious permanent disfigurement, or protracted loss or impairment of any bodily member or organ. This means an injury that causes a substantial risk that the victim will die or an injury that permanently and seriously disfigures the victim, or that causes a long-term loss or limitation on the use of any part of the body.

ADVISORY COMMITTEE NOTE

This instruction is based on Crimes Code section 3701(a)(1)(i), (ii), and (iii). For a definition of "theft," see Crimes Code section 3921(a). For a definition of "attempt," see Crimes Code section 901(a). For a definition of "serious bodily injury," see Crimes Code section 2301. (Serious bodily injury is bodily injury that creates a serious risk of death or causes serious permanent disfigurement, or protracted loss or impairment of any bodily member or organ).

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15.5510 (Crim)

ABUSE OF CORPSE

The defendant has been charged with abusing a corpse. To find the defendant guilty of this offense, you must find beyond a reasonable doubt that the defendant treated [a corpse] [the corpse of *[name of deceased]*] in a way that [he] [she] knew would outrage ordinary family sensibilities [by *[action]*].

ADVISORY COMMITTEE NOTE

This instruction is appropriate when the defendant is charged with violating Crimes Code section 5510. If the defense of legal authority is raised, the court should give an appropriate instruction.

12.907A (Crim)

POSSESSING CRIMINAL INSTRUMENT

1. In order to find the defendant guilty of possessing a criminal instrument as charged in count [count], you must be satisfied that the following three elements have been proven beyond reasonable doubt:

First, that the defendant possessed a certain item [that is [a] [an] [item]]. For a person to "possess" an item, he or she must have the power to control and the intent to control that item; and,

Second, that the item was an instrument of crime. An "instrument of crime" is:

- [a. anything specially made for criminal use; [or]
- b. anything specially adapted for criminal use; [or]
- c. anything that is used for criminal purposes and possessed by the defendant at the time of the alleged offense under circumstances not manifestly appropriate for lawful uses it may have. That a thing could somehow facilitate the possible commission of a crime is not enough; to be an "instrument of crime," a thing must be something the defendant would need to use in the commission of the underlying offense;] and

Third, that the defendant possessed the item with intent to employ it criminally, that is, with intent to attempt or to commit a crime with it. The Commonwealth has charged here that the crime the defendant intended to commit with the instrument alleged was [crime].

ADVISORY COMMITTEE NOTE

The instruction is appropriate for use when a charge under Crimes Code section 907(a) is filed.

Possession may be constructive, *Commonwealth v. Gladden*, 665 A.2d 1207 (Pa. Super. 1995), but possession alone is not sufficient to make out the final element of intent to use the instrument in a crime. *Commonwealth v. Moore*, 381 A.2d 845 (Pa. 1978).

While cases involving "instruments of crime" under section 907(d)(1) (anything either specially made for or adapted to criminal use) are not difficult, the interpretation of section (d)(2) has been the subject of much debate and cries for clarification from the Supreme Court and the legislature.

In early 1995, the Supreme Court decided *Commonwealth v. Ngow*, 652 A.2d 305 (Pa. 1995), under a version of the statute that required the item alleged to be "commonly used for criminal purposes" and possessed "under circumstances not manifestly appropriate for the lawful uses it may have." Having found that the evidence did not support the view that a baseball bat was "commonly used" for criminal purposes, the court vacated the conviction. *Id.* at 306. Justice Castille concurred, and opined that a change in the statute to eliminate the word "commonly" would be appropriate to "effectuate the original intent of the statute defining criminal instruments: to establish a separate and distinct crime for any person who possesses and uses ordinary items for criminal purposes under circumstances not manifestly appropriate for lawful uses that the item may have." *Id.* at 307.

That year, the legislature amended the statute to remove the word "commonly." However, the following year (1996), the legislature again amended the statute to include offenses dealing with body armor and also made a cosmetic change to section 907(d)(2) by capitalizing the word "Anything." In that revision, however, the word "commonly" was put back in, creating considerable confusion as to the state of the law.

The Superior Court addressed that confusion in *Commonwealth v. Magliocco*, 806 A.2d 1280 (Pa.Super. 2002), app. granted, 825 A.2d 638 (Pa. 2003). The Superior Court held that under the principles of the Statutory Construction Act (Title 1 Pa.C.S. § 1104, 1951), the 1996 action of the legislature could not be seen as resurrecting the word "commonly" and undoing the specific 1995 amendment that deleted it. Id. at 1283-85. The *Magliocco* court affirmed the finding that the baseball bat used there was a criminal instrument. Id. The Supreme Court has upheld the Superior Court's ruling in this regard. See *Commonwealth v. Magliocco*, 883 A.2d 479 (Pa. 2005).

The question remains whether the deletion of the word "commonly" has the effect Justice Castille seemed to advocate of criminalizing any item possessed and used for criminal purposes. Concerns about such a broad interpretation have been expressed. See *Commonwealth v. Vida*, 715 A.2d 1180 (Pa.Super. 1998) (majority and concurring opinions) (upholding conviction for possession of a marking pen in a graffiti/criminal mischief incident). Indeed, Judge Beck, who concurred in *Vida* while expressing grave reservations about a boundless reach of the statute, distinguished *Vida* in *Commonwealth v. Williams*, 808 A.2d 213 (Pa.Super. 2002).

In *Williams*, the defendant's use of a walkie-talkie clearly facilitated narcotics trafficking, but the court held that where an instrument was "used only to facilitate the crime" as opposed to be "equipment ... used in the crime itself," a conviction under section 907(a) would not lie. Id.

While distinguishing between instruments that "facilitate" a crime and those used in the crime itself may be very difficult, and subject to criticism, other criticism of the broad interpretation of the amended statute is still possible.

The amended section (a)(2) continues to have two elements: the item must be "used for criminal purposes" and, separate from that, it must be possessed under circumstances not manifestly appropriate to any legitimate use it may have.

The first element cannot be fused into the second unless the statute loses its character as an inchoate crime. To illustrate, assume a defendant assaults another by hitting the victim with a toaster while both are in the parking lot of a department store. In such a case, the possession of the toaster becomes this additional crime only when it is used for the assault, since, while possessing it in a parking lot is to possess it in circumstances not manifestly appropriate for its legitimate use of toasting bread, it is not itself an item "used for criminal purposes" before the fact of its actual use as a bludgeon. Such an interpretation of the statute would seemingly be too broad and too narrow at the same time: broadly including anything tangible that might inflict a wound or cause damage to property, and too narrow in limiting the applicability of the section only to where the more serious and portended offenses were consummated. It must be remembered that the crime is complete upon showing that the defendant *intended* to "employ it criminally," not that he or she succeeded in doing so.

While both *Magliocco* and a Superior Court opinion published before the Supreme Court's rendering in *Magliocco* (but entirely consistent with it), suggest that the *Ngow* notion of offering empirical data on the frequency of use of an item as a criminal instrument is not needed, some rationale for accounting for the elements of this offense is needed. See *Magliocco*, at 489; *Commonwealth v. Robertson*, 874 A.2d 1200, 1208 (Pa.Super. 2005).

No problem exists where an item is either specially made for (or is specially adapted to) a criminal use. But in the third category, the elements require that a defendant (1) *possess* an item under circumstances not manifestly appropriate for a lawful use it may have, and (2) *possess* it with the intent to employ it criminally in the attempt or completion of an offense, and (3) that the item *be* anything that is used for criminal purposes. The toaster seized by a defendant impulsively in the parking lot to facilitate his attack fits the first two categories, but arguably not the third.

However, consider an alternative factual scenario. A defendant finds that a toaster is a handy weapon to use to strike hapless victims from behind to aid in his robbery of them. While certainly not generally the weapon *du jour* for thieves of his ilk, his toaster becomes, both by his plan to use it and, perhaps, his history of using it, every bit an item "used for criminal purposes" as the more traditional gun or knife. Is it a viable interpretation of the existing statute to say that certain items (kitchen knives) are so intrinsi-

cally part of our collective consciousness as potential weapons that if their possession meets elements (1) and (2) above, the knife will fit element (3) as well? And, if an item does not fit as part of our collective consciousness as having potential as a weapon, a defendant may still, by an intention formed at a stage of the process even before he would have taken the substantial step necessary to make it an attempt, imbue it with a character for use in criminal purposes, making even the benign toaster subject to this statute?

We await clarification by our appellate courts on this matter. For now, the proposed instruction faithfully tracks the language of the statute.

CD

18 Pa.C.S. § 905

Pa.C.S. documents are current through 2018 Regular Session Acts 1-14; P.S. documents are current through 2018 Regular Session Acts 1-14

Pennsylvania Statutes, Annotated by LexisNexis® > Pennsylvania Consolidated Statutes > Title 18. Crimes and Offenses (Pts. I — III) > Part I. Preliminary Provisions (Chs. 1 — 13) > Chapter 9. Inchoate Crimes (§§ 901 — 913)

§ 905. Grading of criminal attempt, solicitation and conspiracy.

- (a) **Grading.** — Except as otherwise provided in this title, attempt, solicitation and conspiracy are crimes of the same grade and degree as the most serious offense which is attempted or solicited or is an object of the conspiracy.
- (b) **Mitigation.** — If the particular conduct charged to constitute a criminal attempt, solicitation or conspiracy is so inherently unlikely to result or culminate in the commission of a crime that neither such conduct nor the actor presents a public danger warranting the grading of such offense under this section, the court may dismiss the prosecution.

History

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1974-46 (H.B. 1060), P.L. 213, § 1, approved Mar. 26, 1974, eff. immediately; Act 1995 Special Session-3 (S.B. 16), P.L. 964, § 1, approved Mar. 9, 1995, eff. in 60 days.

Annotations

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